

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PIPE FITTERS' RETIREMENT FUND, LOCAL 597;	)	
PIPE FITTERS' WELFARE FUND, LOCAL 597;	)	
PIPE FITTERS' TRAINING FUND, LOCAL 597;	)	
PIPE FITTERS' INDIVIDUAL ACCOUNT & 401(K)	)	CASE NO.: 20-cv-284
PLAN, LOCAL 597; CHICAGO AREA	)	
MECHANICAL CONTRACTING INDUSTRY	)	JUDGE:
IMPROVEMENT TRUST; PIPE FITTING COUNCIL	)	
OF GREATER CHICAGO; and PIPE FITTERS'	)	MAG. JUDGE:
ASSOCIATION, LOCAL UNION 597 U.A.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
P&M/MERCURY MECHANICAL CORP., an Illinois	)	
Corporation	)	
	)	
Defendants.	)	

**COMPLAINT**

Now come Plaintiffs, the PIPE FITTERS' RETIREMENT FUND, LOCAL 597, *et al.*, by and through their attorneys, JOHNSON & KROL, LLC, complaining of the Defendant, P&M/MERCURY MECHANICAL CORP. ("P&M/MERCURY"), and allege as follows:

**JURISDICTION AND VENUE**

1. This action arises under Sections 502 and 515 of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA") and Section 301 of the Labor-Management Relations Act. 29 U.S.C. §§ 185, 1132, and 1145. The Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.
2. Venue is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2) in that the PIPE FITTERS' RETIREMENT FUND, LOCAL 597; PIPE FITTERS' WELFARE FUND, LOCAL 597;

PIPE FITTERS' TRAINING FUND, LOCAL 597; and the PIPE FITTERS' INDIVIDUAL ACCOUNT & 401(K) PLAN (collectively "TRUST FUNDS") are administered at 45 North Ogden Avenue, Chicago, Illinois, and pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the Northern District of Illinois, Eastern Division.

### **PARTIES**

3. The TRUST FUNDS receive contributions from numerous employers pursuant to collective bargaining agreements between the employers and the PIPE FITTERS' ASSOCIATION, LOCAL UNION 597, U.A., ("UNION"), and therefore are multi-employer plans under 29 U.S.C. § 1002.
4. The CHICAGO AREA MECHANICAL CONTRACTING INDUSTRY IMPROVEMENT TRUST ("INDUSTRY FUND") is an industry improvement fund administered in Burr Ridge, Illinois.
5. The PIPE FITTING COUNCIL OF GREATER CHICAGO ("PFCGC") is a labor management cooperation committee that is administered in Chicago, Illinois.
6. The UNION is the bargaining representative of Defendant P&M's bargaining unit employees.
7. P&M/MERCURY is an Illinois corporation with its principal place of business in Northlake, Illinois.

### **COUNT I** **BREACH OF THE AREA AGREEMENT**

8. Plaintiffs re-allege and incorporate the allegations contained in Paragraphs 1-7 of this Complaint with the same force and effect as if fully set forth herein.
9. P&M/MERCURY is an employer engaged in an industry affecting commerce.

10. P&M/MERCURY entered into a Subscription Agreement recognizing the UNION as the exclusive bargaining representative of its pipe fitter employees and binding itself to Area Agreements negotiated between the UNION and Mechanical Contractors Association of Chicago (“MCA”) (hereinafter the “Area Agreements”) for all times relevant to this action. (A copy of the Service Subscription Agreement is attached as **Exhibit 1**); (A copy of the 2015 Area Agreement is attached as **Exhibit 2**).
11. Through the Area Agreements referred to in Paragraph 10, P&M/MERCURY became bound by certain provisions of the Agreements and Declarations of Trust that created the TRUST FUNDS (hereinafter referred to as the “Trust Agreements”).
12. Pursuant to the provisions of the Area Agreements and the Trust Agreements, P&M/MERCURY is required to make monthly reports of hours worked by its bargaining-unit employees and pay contributions to the TRUST FUNDS, the INDUSTRY FUND, and the PFCGC for each hour worked pursuant to the Area Agreements at the rates negotiated between the UNION and MCA. The monthly reports and contributions during all times relevant were due on or before the fifteenth (15<sup>th</sup>) day of the calendar month following the calendar month during which the work was performed. (**Exhibit 2**).
13. Pursuant to Section 502(g)(2) of ERISA, as well as the provisions of the Area Agreements and Trust Agreements, employers who fail to remit their monthly contribution reports and contributions to the TRUST FUNDS on a timely basis are responsible for the payment of liquidated damages equal to 10% of the amount unpaid and interest at the rate of 1% per month for each month that contributions remain unpaid, plus reasonable attorney’s fees and costs of maintaining suit.

14. Pursuant to the provisions of the Area Agreements and Trust Agreements, employers who fail to remit their monthly contribution reports and contributions to the INDUSTRY FUND and the PFCGC on a timely basis are responsible for the payment of liquidated damages equal to 10% of the amount unpaid and interest at the rate of 1% per month for each month that contributions remain unpaid, plus any reasonable attorney's fees and costs of maintaining suit.
15. Pursuant to the Area Agreement, P&M/MERCURY is required to deduct union dues from its employees' paychecks and remit payment of those dues to the UNION. **(Exhibit 2)**.
16. Pursuant to the Area Agreement, P&M/MERCURY is required to deduct 401(k) Elective Deferrals from its employees' paychecks and remit payment of those dues to the PIPE FITTERS' INDIVIDUAL ACCOUNT AND 401(K) PLAN. **(Exhibit 2)**.
17. Article V, Section 5(a) of the Area Agreement provides as follows:

No Employer shall contract or subcontract any work, to be done at a specific job site of construction, alteration or repair of a building, structure or other work, which comes within the Territorial and Trade Jurisdictions, to any person, firm or corporation not covered by a collective bargaining agreement with the Union, if Employer or any subcontractor of Employer will at any time have an Employee at work at that specific job site. **(Exhibit 2)**.
18. Pursuant to the rules and policies adopted by the Trustees of the TRUST FUNDS, the INDUSTRY FUND, and the PFCGC, employers that violate Article V, Section 5(a) of the Area Agreement are required to pay contributions for the hours worked by their non-union subcontractors.
19. A payroll compliance audit for the period of January 1, 2016, through December 31, 2018, revealed that P&M/MERCURY violated Article V, Section 5(a) of the Area Agreement and, as such, owes the TRUST FUNDS, the INDUSTRY FUND, and the PFCGC the

aggregate amount of \$9,780.39 in contributions for the hours worked by its non-union subcontractors.

20. P&M/MERCURY failed to timely submit contributions for the months of April and May 2016.
21. As a result of P&M/MERCURY's failure to timely pay the contributions for the months of April and May 2016, P&M/MERCURY owes the TRUST FUNDS, the INDUSTRY FUND, and the PFCGC, liquidated damages in the amount of \$12,672.82, and interest in the amount of \$12.00.
22. P&M/MERCURY underpaid contributions to the TRUST FUNDS, the INDUSTRY FUND, and the PFCGC for the month of June 2017 by \$3.00.
23. P&M/MERCURY has a continuing obligation to contribute to the TRUST FUNDS, the INDUSTRY FUND, and the PFCGC and to pay union dues deducted from its employees' wages to the UNION. Therefore, additional amounts may be owed by P&M/MERCURY, which Plaintiffs also seek to include in damages for any judgment.
24. Plaintiffs have been required to employ the undersigned attorneys to collect the monies that are due and owing from P&M/MERCURY.
25. Plaintiffs have complied with all conditions precedent in bringing this suit.
26. P&M/MERCURY is obligated to pay the reasonable attorney's fees and court costs incurred by Plaintiffs pursuant to the Area Agreement, Trust Agreements and 29 U.S.C. § 1132(g)(2)(D).

**WHEREFORE**, Plaintiffs respectfully request:

- A. That Judgment be entered in favor of Plaintiffs and against Defendant P&M/MERCURY

in the aggregate amount of \$21,355.81 for its breach of the Area Agreement, itemized as follows:

Period:	Type:	Amount:
1/1/2016 – 12/31/2018	Contributions for Use of Non-Union Subcontractors	\$9,780.39
1/1/2016 – 12/31/2018	Credit from Audit	(\$1,112.40)
April 2016	Liquidated Damages	\$4,938.66
April 2016	Interest	\$12.00
May 2016	Liquidated Damages	\$7,734.16
June 2017	Contribution Underpayment	\$3.00

- B. That Judgment be entered in favor of Plaintiffs and against P&M/MERCURY for any other contributions, union dues, 401(k) Elective Deferrals, liquidated damages and interest that are found to be due and owing in addition to the amounts referenced in Paragraph A above;
- C. That P&M/MERCURY be ordered to pay the reasonable attorney's fees and costs incurred by Plaintiffs pursuant to the Area Agreement, Trust Agreements, and 29 U.S.C. § 1132(g)(2)(D); and
- D. That Plaintiffs have such other and further relief as the Court may deem just and equitable all at the P&M/MERCURY's costs, pursuant to 29 U.S.C. § 1132(g)(2)(E).

Respectfully submitted,

**PIPE FITTERS' RETIREMENT FUND,  
LOCAL 597, *et al.***

By: /s/ William M. Blumthal, Jr. – 6281041  
One of Plaintiffs' Attorneys

William M. Blumthal, Jr.  
JOHNSON & KROL, LLC  
311 South Wacker Drive, Suite 1050  
Chicago, Illinois 60606  
(312) 757-5472  
blumthal@johnsonkrol.com